



**Submission
to the
UN Working Group on the Gender
Lens to the UN Guiding Principles
on Business and Human Rights**

October 23, 2018



INTRODUCTION

Pay equity or “equal pay for work of equal value” has been recognized as a fundamental human right for many decades at the international level. In 1951, the [United Nation's International Labour Organization](#) (ILO) adopted Convention No. 100, the [Convention Concerning Equal Remuneration for Men and Women for Work of Equal Value](#). The discriminatory practice of undervaluing work historically performed by women can, in part, be addressed by pay equity legislation. Pay equity legislation is also an important method for addressing a major contributor to the overall gender wage gap – that of gender discrimination in pay.

The Province of Ontario is a sub-national jurisdiction in Canada. Though it is not a state actor, the Province supports Canada in its international commitments to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and international Human Rights Law. Ontario is a leader in pay equity legislation having passed the Pay Equity Act (the Act) in 1987 with all party support. The stated purpose of the Act is to redress systemic gender discrimination in the compensation of work performed by employees in female job classes.

The Pay Equity Office (the Office) promotes gender economic equality by enforcing pay equity rights and obligations through effective case and complaint management to ensure compliance with the Act. It promotes awareness to advance economic equality for Ontario's working women, and it advances research on the gender wage gap. These actions address compensation related gender discrimination, a recognized human rights abuse experienced disproportionately by women.

The Office is pleased to have the opportunity to contribute to the UN Working Group developing gender guidance to the UN Guiding Principles on Business and Human Rights (UNGPs). Understanding pay equity and its impacts will assist the Working Group in providing practical recommendations for what it means to “protect, respect and remedy” the rights of women in a business context in line with the UNGPs.

SPECIFIC QUESTIONS/ISSUES

1. In what ways do women experience the impact of business-related human rights abuses differently and disproportionately? Please provide concrete examples in the context of both generic and sector- or region-specific experiences of women.

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4. Which State laws and policies or social, cultural and religious norms continue to impede women's integration into economic activities and public life generally?

The gender wage gap is the difference between wages earned by men and wages earned by women. The gender wage gap can be viewed, in part, as a manifestation of the discrimination experienced by women, both at work and more broadly in society. This discrimination constitutes a human rights abuse. In 1987, when the Act was passed, the gender wage gap for full-time/ full year workers was 36 per cent. The most recent Statistics Canada data indicates that the gender wage gap in Ontario as of 2016 for full-time/full-year workers is 26 per cent, a reduction of 10 points in 30 years. It is important, however, to consider the annual earnings for all workers, including part-time workers as this figure more accurately reflects the impact of all of the factors that contribute to the gender wage gap. In that case the gender wage gap is 29 per cent.

The root cause of the gender wage gap is gender stereotypes, cultural and social norms that determine how men and women are perceived at home and at work and prevent women from achieving their full economic potential. For a full description of the causes and outcomes of the gender wage gap in Ontario, reference should be made to the Gender Wage Gap Strategy Steering Committee's [Background Paper](#) and [Final Report and Recommendations](#). The Recommendations cover five policy and program areas:

- Balancing work and caregiving
- Valuing work
- Workplace practices
- Challenging gender stereotypes
- Other ways government can close the gender wage gap

2. Please share any good practices on how to deal with increased marginalisation or vulnerabilities faced by women due to intersectionality, feminisation of work, informal economy, and conflicts.

Pay equity specifically deals with the feminization of work, or work that has traditionally been performed by women, that has been systemically undervalued. The Act was, and continues to be, internationally recognized because:

1. It is proactive legislation (i.e. employers have ongoing obligations that are not dependent on a complaint being filed);
2. It applies to both private and public sectors; and,
3. It sets out in clear detail the steps necessary to identify and correct systemic gender discrimination in the compensation of work considered to be traditionally female within individual establishments.

The Act applies to all organizations in the private sector with 10+ employees and all organizations in the public sector. Organizations are required to have compensation practices that have been analyzed through a pay equity lens, to ensure that employees in female job classes are paid at least as much as employees in comparably valued male job classes and to maintain pay equity so that gaps do not emerge due to changes in the organization's structure when jobs change or are added, regardless of whether there is a complaint.

The Act also covers employers in many female-dominated sectors where comparisons with male job classes are not possible (addressing occupational segregation) through the use of the "proxy" method of comparison. This allows employers in certain broader public sectors with all female employees to borrow pay equity adjusted job rate information from other public sector employers in order to achieve pay equity.

Through the operations of the Pay Equity Office, an independent agency of the Ministry of Labour in Ontario, the Act provides a practical mechanism for workplace parties to bring complaints about contravention. Complaints received are investigated and resolved by Review Officers. In addition to investigating complaints, Review Officers at the Office monitor organizations for compliance through structured monitoring programs.

To enforce the Act, Review Officers have statutory authority to effect settlements, request documentation, enter into premises, interview witnesses and may make such orders as are necessary to bring organizations into compliance. Since 2011, the Office has investigated nearly 800 complaints and conducted nearly 1,500 monitoring cases. The total adjustments identified for almost 10,000 workers in female job classes since 2011 is over \$30 million.

In addition to these outcomes, there are often announcements of pay equity achievement and adjustments to wages of employees in female job classes in unionized settings. In these cases parties themselves have negotiated pay equity through their agreed upon processes and Office involvement is not triggered. Pay equity activity has increased over the last few years and is tied to the Office's direct contact with employers about their obligations. The Office reaches out to employers through targeted monitoring programs, and recently reached out to both unions and employers to raise awareness of the Act and examine how unions and employers engage on pay equity issues.

The Office provides educational resources and general advice in both English and French to assist workplace parties in achieving and maintaining pay equity in their workplaces. The Office also engages in research about pay equity and related issues, such as the gender wage gap, as resources permit and maintains significant relationships with other jurisdictions that are pursuing pay equity and gender wage gap solutions.

Identifying gender bias in business compensation practices can be a complicated task. Over the last 30 years, the Office has developed a pay equity evaluation methodology and the necessary expertise to assist Employers in the proactive identification of systemic wage discrimination. The Office's independent Review Services staff has compensation, human rights, and labour law knowledge and the Office is committed to continuous learning to ensure that that staff are current on developments in these areas such as the rise in the use of contract workers coupled with the shift towards a "gig-economy".

6. How could policy coherence be improved between different government ministries or departments dealing with women issues and business-related matters?

In Ontario, in addition to pay equity, there is also legislation that covers gender pay discrimination through an equal pay for equal work provision. This provision can be found in the Employment Standards Act, 2000 and it requires woman and men to receive equal pay when they do the same or substantially the same job in the same establishment. The Employment Standards Act, 2000 is administered by the Ministry of Labour.

During the consultations of the Ontario Gender Wage Gap Steering Committee, the Committee heard that there was confusion about the differences between pay equity and equal pay for equal work. Policy coherence may be improved by moving the equal pay for equal work provision to the Act. This way, those accessing remedies for compensation discrimination related to gender need to only connect with one body, and mechanisms and criteria for enforcement could be harmonized.

Generally, this translates into the idea that both individuals and businesses benefit when a streamlined, “one-window” approach to policy and legislation dealing with gender discrimination and business related matters. This is echoed by a recent EY Report commissioned by the Ontario government titled: Managing Transformation – A Modernization Action Plan for Ontario, which states that the use of digital technology and data and analytics can help achieve further simplification of regulatory management with a focus on integrating regulatory data across regulators.

8. Are there any good practices of business enterprises adopting a gender perspective in making human rights policy commitments, addressing the gender wage gap and under-representation of women in boards and senior positions, or involving affected women in meaningful consultations and remediation processes?

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9. What is the role of businesses in dealing with domestic laws, policies and societal practices which are discriminatory to women?

The Act assists business enterprises in Ontario in adopting a gender perspective in compensation. Under the Act, the role of businesses is to undertake a pay equity analysis proactively. The Act specifies the steps to achieve pay equity by:

- Undertaking comparisons between female and male job classes in terms of compensation and value;
- Determining value of work using a composite of skill, effort, responsibility and working conditions;
- Setting out methods of comparison; and,
- Achieving pay equity by adjusting the job rates of female job classes so that they are at least equal to the job rates of comparably valued male job classes.

Businesses are also obligated to maintain pay equity, ensuring that pay equity gaps to not reopen. While pay equity is the law in Ontario, the steps to achieved pay equity can be instructive for enterprises in jurisdictions where this is not yet pay equity legislation.

Businesses in Ontario could be further engaged in pay equity through the implementation of Ontario Chamber of Commerce (OCC) recommendations to government from the [Blueprint for Making Ontario Open for Business](#) related to pay equity. These include:

- Dedicating resources towards improving awareness and accountability under the Pay Equity Act through further empowerment of the Pay Equity Office.
- Avoiding inflicting duplicative and burdensome reporting obligations on employers by harmonizing with existing reporting requirements for businesses.
- Conducting an analysis of reported data to not merely accurately identify and track the wage gap, but reveal insights into its causes. From that analysis, identify and implement targeted policy solutions.

It is also important to note that pay equity is only one way to approach systemic issues related to gender discrimination and business enterprises. In select jurisdictions, a broader gender workplace analysis of business practices and the workforce is available.

For example, Australia's Workplace Gender and Equality Act, 2012 requires relevant employers to report against a set of standardized gender equality indicators that include:

- The gender composition of the workforce
- The gender composition of governing bodies of relevant employers
- Equal remuneration between women and men
- The availability and utility of employment terms, conditions and practices relating to flexible working arrangements for employees and to working arrangements supporting employees with family or caring responsibilities
- Consultation with employees on issues concerning gender equality in the workplace
- Any other matters specified by the Minister: sex-based harassment and discrimination

Gender analytics programs can help businesses examine:

- Hiring and setting starting salaries;
- Compensation, including bonus-setting;
- Access to training and promotion opportunities;
- Participation in decision-making roles; and/or,
- How employees who take parental and other caregiving leaves are treated.

Collecting and analyzing gender-specific data may bring increased awareness to human rights issues experienced by women in the workforce such as gender pay discrimination.

The Pay Equity Office would be pleased to provide further information if required. The Office contact is:

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